

APOLONIO GONZAGA, PROTESTANT AND APPELLANT, VS. CONRADO D. SENO, PROTESTEE AND APPELLEE.*G. R. No. L-20522. April 23, 1963*

Ponente: BAUTISTA ANGELO, J.

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In the election held on November 10, 1959, four candidates for the office of Mayor of Mandawe, Cebu, were presented, to wit: Apolonio Z. Gonzaga, Conrado D. Seno, Vicente B. Seno and Sergio Sanchez. After the canvass of the election, the municipal board of canvassers proclaimed Conrado D. Seno as mayor-elect having received 3,786 votes over his opponent Apolonio Z. Gonzaga who, obtained 3,740 votes, or a majority of 46 votes. On November 20, 1959, Gonzaga filed an election protest before the Court of First Instance of Cebu based mainly on vote-buying, which was answered by Conrado D. Seno with a counter-protest as to three precincts.

Commissioners were appointed. In the course of the trial, the counterprotest was withdrawn. On February 28, 1961, the court a quo decided the protest in favor of protestee but declared that his majority of 46 was reduced to 12 mainly on the ground that the invalidated ballots were found to be marked.

Considering that the court a quo erred in admitting about 92 ballots wherein the words "D. Seno" appear written on the space for mayor as valid votes for protestee, protestant Gonzaga appealed the case to the Court of Appeals. In due course, protestee Seno submitted his brief refuting the only error assigned by protestant but discussing not only questions of law but also questions of fact.

After both parties had submitted their briefs and the case was heard and submitted for decision, protestant moved that the protest be elevated to this Court upon the plea that the only issue involved in this appeal is one of law. This motion was granted over the objection of protestee who, in his brief, raised both questions of law and of fact, for which reason this Court will limit its discussion to the only issue raised by protestant relative to the admission in favor of appellee of the 92, ballots which on the space for mayor the words "D. Seno" appear written,

The law on which the issue hinges is Rule 16, Section 149 of the Revised Election Code, which reads as follows;

"When there are two or more candidates for an office with the same name or surname, the voter shall, in order that his vote may be counted, add the correct name, surname or initial that will identify the candidate for whom he votes."

Appellant contends that under the above rule where there are two candidates for mayor which bear the same surname of "Seno" the voter, in order that his vote will be counted and the candidate he intends to vote for will be identified, shall add the correct initial of the correct Christian name, either of the appellee, which is Conrado, or of the candidate Vicente Seno, which is Vicente, and since none of the initials of either Christian name appears written on the 92 ballots in question because the initial "D" written thereon is not the correct initial of the Christian name of either candidates, which is "C" or "V", it was error for the court a quo to have considered said ballots as valid votes for protestee. In other words, appellant is of the opinion that Rule 16 as copied above should be interpreted to reflect the intention of the legislature as follows:

"When there are two or more candidates for an office with tlio same name or surname, the voter shall, in order that his vote may be counted, add the correct name, the correct surname or the correct initial of the correct name or of the correct surname that will identify the candidate for whom he votes.

"The correct initial of the correct name or surname being therefore the initial definitely, explicitly and expressly required by Rule 16, it follows that the correct initial, or any other kind of initial, is excluded under the principle of 'inclusio unius est exclusio alterius.' Thus, in the case at bar, as to the candidates surnamed 'Seno,' it is indispensable that THE CORRECT initial of their respective correct Christian name should be prefixed to their surname 'Seno' (1) in order that they can claim that they are identified by the voter and (2) in order that the vote will be counted. Based on protestee-appellee's Certificate of Candidacy, Exh. D, is the initial "D." the correct initial of his correct Christian name of 'Conrado'? Is it the correct initial of Dr. Seno's correct 'Christian name of 'Vicente' The answkers are quite obvious."

Appellee disagrees with the above interpretation, firstly, because it would run counter to a well-known rule of statutory construction, secondly, it would render useless the qualifying clause, "that will identify the candidate for whom he votes", and thirdly, it would leave a void in the law. In our opinion, this observation is well-taken.

To begin with, we find that the language of Rule 16 is clear. It provides that if there are two or more candidates bearing the same name or surname, the voter shall add the correct name, surname, or initial that will identify the candidate for whom he votes. This only means that the voter, to identify his vote, should add either the initial of the correct name, the initial of the correct surname, or any initial that might identify the candidate for whom he votes. The word initial does not necessarily refer either to the name or surname of the candidate, it being sufficient that it identifies the candidate chosen by the voter. To hold otherwise would be to add to the rule something not intended therein, as the one intimated by appellant.

There is another reason that justifies the observation of appellee that the interpretation which appellant gives to the rule would run counter to some provisions of Section 149 which contains the different rules relative to the appreciation of ballots. We have, for example, the content of Rule 6 which refers to three kinds of initials: the initial of the name which accompanies the correct surname of a candidate, the initial of the surname which accompanies the correct name of a candidate, and the intermediate initial between the correct name and surname of a candidate. The use of these three initials in the preparation of a ballot which according to this rule does not have the effect of annulling the vote even if erroneous provided the candidate is identified, gives an idea of how Rule 16 should be interpreted, for it contains a clear in situation that the voter may write on the ballot not only the initial letter of a correct name or surname, but also the initial letter of any intermediate name the candidate may have. And it is well-known that the use of an intermediate initial by persons who bear, the same name and surname is a common occurrence, for they can only to identified by using that intermediate initial.

It is probably for this reason that the court a quo was persuaded to consider the 92 ballots in question as valid votes for protestee it appearing undisputed that the name and surname of the latter bears the intermediate initial "D". In other words, his correct name as it appears in his certificate of candidacy is Conrado D. Seno. Certainly, a ballot bearing the words "D. Seno" cannot be confused with the other candidate bearing the same surname for his real complete name is Vicente B, Seno,

Another reason that may be advanced for the admission of said ballots in favor of appellee is the undisputed facts that appellee was well-known in the place where he was a candidate as "Dado Seno", the first word being his nickname. As a matter of fact, many of the votes cast for him and which were admitted without dispute bear the same nickname before his surname. And since he was admittedly well-known by that nickname in the municipality where he was a candidate, a part from the fact that, that nickname appears in his sample ballots, it is no wonder if many have voted or him writing only the initial "D" of his nickname as the only identifying mark. In

this connection, we do not agree to the contention that the word initial can only apply to a name or surname and not to a nickname. Even Webster's dictionary defines that word as "a first part, a beginning, an initial, letter, note or the like."

We believe that the case of *Moya vs. Del Fierro*, 69 Phil., 199, was properly invoked by the court a quo in support of its view that the words "D. Seno" which appear in the ballots in question may stand for Dado Seno by which appelle was well-known in the municipality. In that case Moya objected to 72 ballots counted for Agrifino del Fierro contend that the words "P. del Fierro" could not be considered for del Fierro because the letter "P" was merely the initial letter of his nickname "Pino", but this Court, brushing aside this objection, counted said ballots as valid votes for Del Fierro in the following language:

"The fourth assignment of error deals with the 72 ballots where 'P. del Fierro' was voted for the office of mayor, and it is the contention, of the petitioner that said ballots should not have 'been counted by the Court of Appeals in favor of the respondent. For the identical reason indicated under the discussion of petitioner's second assignment of error, namely, that 'P' stands, for 'PINO' in 'PINO DEL FIERRO' which is a name mentioned in the certificate of candidacy of the respondent, we hold that there was no error in the action of the Court of Appeals in awarding the said ballots to the respondent.

"Counsel for both parties have called, our attention to the different and divergent rules laid down by this Court on the appreciation of ballots. It will serve no good and useful purpose for us to engage in the task of reconciliation or harmonization of these rules, although this may perhaps be undertaken, as no two cases will be found to be exactly the same in factual or legal environment. It is sufficient to observe, however, in this connection, that whatever might have been said in cases heretofore decided, no technical rule or rules should be permitted to defeat the intention of the voter, if that intention is discoverable from the ballot itself, and not from evidence aliunde. This rule of, interpretation goes to the very root of the system. Rationally, also, this must be the justification for the suggested liberalization of the rules on appreciation of ballots which, are now incorporated in section 144 of the Election Code, Commonwealth Act No. 357)." (*Italics supplied*).

Wherefore, the decision appealed from is affirmed. Costs against appellant,

Bengzon, C. J., Padilla, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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